

Bracy v. City of Los Angeles
Case No. CV 13-9350 JC
Exhibit “A”

Subj: **RE: Bracy - Examination by Doctor and Life Care Planner**
Date: 7/6/2015 12:15:58 P.M. Pacific Daylight Time
From: BDunn@CochranFirm.com
To: cory.brente@lacity.org
CC: MGyongyos@CochranFirm.com, PeterFerg@aol.com, kelly.kades@lacity.org
Cory,

I think the best way for us to proceed at this point is as follows:

We have a problem concerning the timing of this IME, because your proposed exam is well after the discovery cut off date, and you knew that Bracy was seriously injured years ago.

We also have an issue concerning the scope of the exam, which, at present remains somewhat undefined.

Since it is you who wishes to conduct an untimely IME, please prepare a draft of a detailed stipulation concerning the scope of your proposed examination.

After we review it, we will be in the best position to craft our disputed issues for Judge Chooljian, who, pursuant to Rule 35, must prepare the Order for the IME.

Brian

Brian T. Dunn
Managing Partner

THE COCHRAN FIRM - California

4929 Wilshire Boulevard, Suite 1010
Los Angeles, CA 90010

(323) 435-8205 Telephone
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From: Cory Brente [<mailto:cory.brente@lacity.org>]
Sent: Monday, July 06, 2015 11:23 AM
To: Brian Dunn
Cc: Megan Gyongyos; Pete Ferguson; Kelly Kades
Subject: RE: Bracy - Examination by Doctor and Life Care Planner

Brian,

Thanks for responding, but the Local Rules require that we engage in a meaningful meet and confer, and that we narrow the issues as much as possible. I sent you a detailed e-mail on July 3rd, but your response this morning gives neither me nor the Court guidance on what is Plaintiff's position.

Please respond to the questions raised in my e-mail of July 3rd. If not, we will be compelled to advise the Court that a key reason for our ex parte is Plaintiff's refusal to answer discrete and specific questions that could eliminate or narrow the need for ex parte relief.

We all know that the courts discourage unnecessary ex parte applications, as well as those that include issues that are not in dispute. Thus, we need to know with particularity your response to the questions and issues raised in my e-mail of July 3rd.

Thanks,

Cory

Monday, July 13, 2015 AOL: Peter Ferg

On Jul 6, 2015 10:31 AM, "Brian Dunn" <BDunn@cochranfirm.com> wrote:

Cory,

It doesn't look like we are going to be able to resolve this by stipulation.

Please let me know when you plan on filing your papers.

We will certainly oppose your application.

Brian

Brian T. Dunn
Managing Partner

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From: Cory Brente [<mailto:cory.brente@lacity.org>]

Sent: Friday, July 03, 2015 12:35 PM

To: Brian Dunn

Cc: Pete Ferguson; Megan Gyongyos; Kelly Kades

Subject: Re: Bracy - Examination by Doctor and Life Care Planner

Brian,

I never heard back from you yesterday about a conference call, so I'll attempt to do this by email. As I have stated previously, we disagree with your position, but we need to clarify what it is so we can know how to proceed.

You have previously stated that someone from your office would be present when our life care planner examines Mr. Bracy. While I understand that you object to a physician also being present and participating in the examination, it's not clear to me how you intend to respond if a physician shows up at the prison.

So, to be clear, if a physician accompanies the life care planner, is it your intention to block the examination from going forward at all? We need to know how you intend to respond so we can know how to proceed on our end. If, for example, you were to tell us that if a physician accompanies the life care planner, you would allow the exam to go forward, but would be preserving any objections you may have to the physician testifying at trial, that's one thing. But if, on the other hand, you were to tell us that if a physician were to accompany the life care planner, you would block the exam or tell your client not to participate in the exam, that's another matter.

We need to know your response, because we need to decide if we need to seek ex parte relief from the court. A response you indicating that you would not block or interfere with the exam, but would be preserving your objections to the physician from testifying at trial would obviate the need for ex parte relief, as the matter could be resolved by way of motion in limine.

A response from you indicating that you would block, interfere or disrupt the examination if a physician accompanied the life care planner would suggest the need for ex parte relief.

Please let us know your position as soon as possible so we can move forward on this issue.

Cory

Monday, July 13, 2015 AOL: Peter Ferg

On Jul 2, 2015 9:15 AM, "Cory Brente" <cory.brente@lacity.org> wrote:
Brian,

I disagree with your position and analysis, but Pete and I would like to discuss the matter with you. Are you available for a phone conference today at 4:00?

Cory

Cory M. Brente
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On Wed, Jul 1, 2015 at 6:02 PM, Brian Dunn <BDunn@cochranfirm.com> wrote:
Cory,

I do not agree with your position. No defendant elected to have an IME done of the plaintiff prior to the discovery cut off date, and your request has not surfaced until after the plaintiffs have produced expert disclosures. As such, the role of any defense medical expert at this late stage of the litigation must logically be limited to a rebuttal of the Rule 26 reports of the plaintiff's experts. The plaintiff's treaters were listed, but did not provide written Rule 26 reports. Hence, there is nothing for a newly retained doctor to rebut, except for our life care planner's June 11 Report.

Therefore, our position remains that the scope of any such examination must be limited to the specific subjects of our life care planner's findings and opinions.

Brian

Brian T. Dunn
Managing Partner

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From: Cory Brente [<mailto:cory.brente@lacity.org>]
Sent: Wednesday, July 01, 2015 12:43 PM
To: Brian Dunn
Cc: Megan Gyongyos; Pete Ferguson; Kelly Kades
Subject: Re: Bracy - Examination by Doctor and Life Care Planner

Brian,

I do not believe our rebuttal is limited to the scope of your life care planner. We can rebut any expert on any subject you have designated, retained or not, and you have designated all (or most) of your client's

Monday, July 13, 2015 AOL: Peter Ferg

treating physicians as experts, which puts their opinions, findings, diagnosis, prognosis and conclusions at issue. If you have authority that stands for the proposition that we can only rebut retained (as opposed to non-retained) experts, please provide that to us for our review.

Thank you for your response and, like you, we would like to resolve this informally,

Cory

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On Wed, Jul 1, 2015 at 12:32 PM, Brian Dunn <BDunn@cochranfirm.com> wrote:
Cory,

I will not object to the exam, but we must work out a detailed written stipulation regarding the scope of the examination.

As you know, your proposed IME is in rebuttal to that of our life care planner, and must not go outside the scope of her exam, as reflected in her June 11 Report.

Also, I will request the presence of someone from this office to be present.

If we can agree to the terms of this stipulation, I don't feel a court order will be necessary.

If we cannot, we may need to put this before the judge.

Brian

Brian T. Dunn
Managing Partner

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From: Cory Brente [<mailto:cory.brente@lacity.org>]
Sent: Wednesday, July 01, 2015 10:44 AM
To: Brian Dunn; Megan Gyongyos
Cc: Pete Ferguson; Kelly Kades
Subject: Bracy - Examination by Doctor and Life Care Planner

Monday, July 13, 2015 AOL: Peter Ferg

Brian,

We would like to have Mr. Bracy examined by a doctor and/or a life care planner. Given that the prison only allows access on Fridays, and given the cut-off date for our rebuttal expert designation, we are aiming for Friday, July 10th.

Please let us know if you will agree to the examination or whether we will need to file an ex parte application for an order compelling his examination.

Thanks,

Cory

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